

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY UTILITIES COMPANY

ALLEGED VIOLATIONS OF COMMISSION
REGULATIONS

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) CASE NO. 94-202
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O R D E R

After its receipt of an Electrical Utility Accident Investigation Report in which Commission Staff alleged that Kentucky Utilities Company ("KU") had failed to comply with Commission regulations, the Commission ordered KU to show cause why it should not be penalized for its alleged failures. KU has responded in writing to the Report's allegations, stipulated the facts and submitted written briefs. KU has waived its right to an evidentiary hearing and moved for a decision based on the existing record.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. KU is a corporation which engages in the distribution of electricity to the public for compensation of light, heat, power and other uses, and is therefore a utility subject to Commission jurisdiction. KRS 278.010(3)(a).

2. Commission Regulation 807 KAR 5:006, Section 24, requires a utility to adopt and execute a safety program.

3. Commission Regulation 807 KAR 5:041, Section 3, requires an electric utility to maintain its plant and facilities in

accordance with the standards of the National Electrical Safety Code (1990 Edition) ("NESC").

4. NESC Section 420H requires employees to "use the personal protective equipment, the protective devices, and the special tools provided for their work."

5. Prior to September 13, 1993, KU had established safety rules which prohibited employees from touching or working on "any exposed energized lines or apparatus except when wearing protective equipment approved for the voltage to be contacted." KU Safety Rule 31-2.

6. KU has employed James David Stratton ("Stratton") since November 1990. Stratton is currently employed as a Line Technician A.

7. Prior to November 1990, Pennyrile Rural Electric Cooperative Corporation employed Stratton as a lineman for two years and four months.

8. KU has employed William Mackey Bailey ("Bailey") since November 1981. Bailey is currently employed as a Line Supervisor B.

9. Green River Electric Cooperative Corporation had previously employed Bailey as a lineman for approximately four years.

10. On September 13, 1993, KU assigned Stratton to perform construction and maintenance work on KU facilities in Muhlenberg County, Kentucky. Bailey was Stratton's immediate supervisor.

11. Prior to commencing the project, Bailey conducted a safety or "tailgate" session with Stratton and Steve Hendrix, the other KU employee involved in the project. During this session, Bailey reviewed the project and the required safety procedures.

12. At approximately 4:30 p.m., C.S.T., on September 13, 1993, Stratton suffered burn injuries to his right hand and left thigh when he brushed against an energized 7,200 volt line.

13. At the time of the incident, Stratton was equipped with protective equipment, including rubber overshoes, rubber gloves, rubber sleeves, hard hat, and eye protection. He, however, was not wearing a protective insulated glove on his right hand.

14. Prior to the incident, Stratton had been trained in the use of and necessity for using protective equipment at all times when in proximity of high voltage electric lines.

15. At the time of the incident, Stratton knew that he should not have removed his protective insulated glove.

16. Stratton violated KU Safety Rule 31-2 and NESC Section 420H.

17. At the time of the incident, Stratton was acting within the scope of his employment on the project.

18. At the time of the incident, KU owned the facilities in question.

19. Bailey neither observed Stratton remove his glove nor was aware that Stratton had removed his glove. He was approximately 25 feet from Stratton and was performing other job related assignments.

20. A utility fails to execute its safety program when it fails to enforce the safety rules which it has established.¹

21. The record fails to show that KU did not enforce its safety rules during the time of the incident.

22. Any utility which willfully violates any Commission regulation is subject to civil penalty. KRS 278.990(1).

23. A willful violation "means 'knowing' violation or 'knowing failure to comply.'" Oldham v. Kubinski, 185 N.E.2d 270, 280 (Ill. App. 1962). See, Muncy v. Commonwealth, Ky., 97 S.W.2d 606, 609 (1936). ("The word 'wilful' in its general acceptation means intentionally, not accidentally nor involuntarily.") See also Woods v. Corsey, 200 P.2d 208, 211 (Cal. App. 1948). (A willful violation is "one which is intentional, knowing, voluntary, deliberate or obstinate")

24. KRS 278.990(1) provides: "Each act, omission, or failure by an officer, agency, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility."

25. Stratton's violation of NESC Section 420H was willful.

26. Based upon the principle of imputed liability contained in KRS 278.990(1), KU willfully violated Commission Regulation 807 KAR 5:041, Section 3, by failing to comply with NESC standards while maintaining its plant and equipment.

¹ Case No. 94-013, Jackson Purchase Electric Cooperative Corporation, Inc. - Alleged Violation of Commission Regulations 807 KAR 5:006 and 807 KAR 5:041, slip op. at 3 (Jun. 19, 1995).

27. For its failure to comply with Commission Regulation 807 KAR 5:041, Section 3, KU should be assessed a penalty of \$1,000.

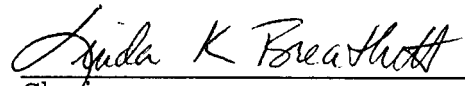
IT IS THEREFORE ORDERED that:

1. A penalty in the amount of \$1,000 is assessed against KU for its willful failure to comply with Commission Regulation 807 KAR 5:041, Section 3.

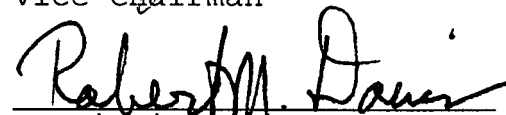
2. KU shall pay the assessed penalty within 20 days of the date of this Order by certified or cashier's check made payable to "Treasurer, Commonwealth of Kentucky." This check shall be delivered to Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky, 40602.

Done at Frankfort, Kentucky, this 10th day of April, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director